

Mitchell P. Hurley
Dean L. Chapman Jr.
John P. Kane
AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, New York 10036
Telephone: (212) 872-1000
Facsimile: (212) 872-1001

*Proposed Special Litigation Counsel for Debtors and
Plaintiffs Celsius Network Limited and Celsius Network LLC*

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:	Chapter 11
CELSIUS NETWORK LLC, <i>et al.</i> , ¹	Case No. 22-10964 (MG)
Debtors.	Jointly Administered
CELSIUS NETWORK LIMITED and CELSIUS NETWORK LLC,	
Plaintiffs,	Adversary Proceeding No. 22-_____ (MG)
v.	<u>ADVERSARY COMPLAINT</u>
PRIME TRUST, LLC,	
Defendant.	

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Celsius Network LLC (2148); Celsius KeyFi LLC (4414); Celsius Lending LLC (8417); Celsius Mining LLC (1387); Celsius Network, Inc. (1219); Celsius Network Limited (8554); Celsius Networks Lending LLC (3390); and Celsius US Holding LLC (7956). The location of Debtor Celsius Network LLC's principal place of business and the Debtors' service address in these chapter 11 cases is 121 River Street, PH05, Hoboken, New Jersey (07030).

Plaintiffs Celsius Network Limited and Celsius Network LLC (together, “Plaintiffs” or “Celsius”) by and through their undersigned counsel, bring this action against Defendant Prime Trust, LLC (“Prime Trust” or “Defendant”) and allege as follows:

NATURE OF THE ACTION

1. By this action, Celsius seeks the turnover and transfer of crypto assets that are in the possession of Prime Trust, an entity that continues to exercise dominion and control over property over which it has no claim or title. The crypto assets that Prime Trust has failed to turn over to Celsius are worth approximately \$17 million at recent prices.

2. Celsius is a cryptocurrency platform that, at relevant times, offered rewards to its users who transferred their crypto assets to Celsius through the earn (“Earn”) program. Users in the Earn program grant Celsius all rights and title to the crypto assets from the time the user transfers the assets until the assets are transferred back to the user.

3. Relevant here, for a period in 2020 through mid-2021, crypto assets from New York and Washington users were held by Prime Trust. Prime Trust’s duties were ministerial in nature, and Prime Trust did not take any ownership rights in the crypto assets.

4. In June 2021, Prime Trust purported to terminate its relationship with Celsius and indicated its desire to return the crypto assets it was holding to Celsius. Based on the consent of certain New York and Washington users to revised terms of use, Celsius directed Prime Trust to transfer certain crypto assets at issue to Celsius. Prime Trust complied in part, transferring crypto assets worth approximately \$119 million (at recent prices) to Celsius. But Prime Trust has failed and refused to transfer to Celsius approximately \$17 million worth of crypto assets (at recent prices) that Celsius instructed Prime Trust to deliver.

5. Upon the commencement of these bankruptcy proceedings, Prime Trust was obligated under the Bankruptcy Code to deliver all property belonging to Celsius that is in Prime Trust's possession to Celsius, including these remaining crypto assets, and should be ordered to turn them over now pursuant to section 542 of the Bankruptcy Code. Alternatively, Celsius seeks specific performance of certain contractual provisions obligating Prime Trust to deliver and transfer the crypto assets to Celsius.

PARTIES

6. Plaintiff Celsius Network Limited is a private limited company incorporated under the laws of England and Wales with its principal place of business located at The Harley Building, 77-79 New Cavendish Street, London, UK W1W 6XB.

7. Plaintiff Celsius Network LLC is a limited liability company incorporated under the laws of Delaware with its principal place of business located at 121 River Street, PH05, Hoboken, New Jersey, 07030. Celsius Network LLC's only member is Celsius Network Limited.

8. Defendant Prime Trust is a Nevada chartered trust company with its principal place of business located at 330 S. Rampart Blvd., Suite 260, Summerlin, NV 89145.

JURISDICTION AND VENUE

9. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of the United States District Court for the Southern District of New York (the "Southern District of New York") referring to the Bankruptcy Judges of the Southern District of New York all cases and proceedings arising under title 11 of the United States Code (the "Bankruptcy Code"). Federal subject matter jurisdiction also exists under 28 U.S.C. § 1332(a) based on complete diversity of citizenship of the parties and because the amount in controversy, exclusive of interest and costs, exceeds \$75,000, and under 28 U.S.C. § 1331.

10. This adversary proceeding constitutes a “core” proceeding as defined in 28 U.S.C. § 157(b)(2)(A). In the event that this or any other appropriate Court finds any part of this adversary proceeding to be “non-core,” Plaintiffs consent to the entry of final orders and judgments by the Bankruptcy Court, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure.

11. Venue in the Southern District of New York is proper under 28 U.S.C. §§ 1408 and 1409 because this adversary proceeding arises under and in connection with cases commenced under the Bankruptcy Code.²

BACKGROUND

A. Celsius’ Business

12. Celsius is one of the largest cryptocurrency-based finance platforms in the world and provides financial and technology services to institutional, corporate, and retail clients across more than 100 countries. It was founded in 2017 to be one of the first crypto platforms that would allow users to transfer their crypto assets and (a) earn rewards on such crypto assets and/or (b) take loans using such transferred crypto assets as collateral.

13. The relationship between Celsius and its Earn users is governed by terms of use (the “Terms of Use”) published on the Celsius website and platform. In addition, and as provided in the Terms of Use, to the extent a Celsius user borrows from Celsius, the loan is also governed by a separate loan agreement between Celsius and the borrowing user.

B. Celsius and its Users Entered into Certain Agreements with Prime Trust

14. Beginning on or around June 15, 2020, Celsius’ Terms of Use included detailed terms providing that Prime Trust would hold assets for Celsius users residing in New York and

² Notwithstanding that certain putative agreements contain a clause purporting to provide for arbitration of certain claims in Clark County, Nevada, this action is properly adjudicated by the Bankruptcy Court, including, without limitation, based on the nature of the proceeding and types of claims asserted herein.

Washington (the “PT Terms”).³ Under this arrangement, users’ crypto assets were transferred to Prime Trust individual “wallets” – addresses on the blockchain where digital assets can be stored – associated with such users (“User PT Wallets”), and then swept out of the User PT Wallets into centralized Celsius wallets established by Prime Trust (“Celsius PT Wallets”).

15. To document this arrangement, Celsius, its New York and Washington users, and Prime Trust entered into certain contracts. These contracts were (i) the PT Terms between Celsius and the New York or Washington user, which were to be read “together with the” Celsius Terms of Use applicable to all users; (ii) upon information and belief, the Self-Directed Custodial Account Agreements between Prime Trust and each user (the “User PT Custody Account Agreements”);⁴ (iii) the Prime Asset Custody Account Agreement between Celsius and Prime Trust (the “Celsius PT Custody Account Agreement,” and together with the User PT Custody Account Agreements, the “PT Custody Account Agreements”);⁵ and (iv) the API Technology Agreement Account Form between Celsius and Prime Trust (the “Services Agreement”).⁶ These agreements, together with the Terms of Use, operated collectively to establish Prime Trust as the holder of the crypto assets transferred by users in New York and Washington (the “Subject Property”) and grant Celsius authority to, among other things, direct Prime Trust with respect to the Subject Property.

³ A prior version of the Terms of Use in place from May 5, 2020, through June 15, 2020, indicated that assets transferred by users in New York would be held by Prime Trust, but did not provide any detailed Prime Trust terms. The PT Terms effective as of June 15, 2020 reference users in New York, Texas, and Washington, but in practice applied only to users in New York and Washington. A true and correct copy of the June 15, 2020 Terms of Use, inclusive of the PT Terms, is attached to the *Declaration of Alex Mashinsky, Chief Executive Officer of Celsius Network LLC, Providing Terms of Use Dating Back to February 18, 2018*, dated August 8, 2022 [ECF No. 393] (the “Mashinsky Decl.”) as Exhibit A-4.

⁴ A true and correct version of the form of User PT Custody Account Agreement supplied to Celsius by Prime Trust is attached hereto as Exhibit A.

⁵ A true and correct version of the Celsius PT Custody Account Agreement dated November 13, 2019 is attached hereto as Exhibit B.

⁶ A true and correct version of the Services Agreement is attached hereto as Exhibit C.

16. The PT Terms. The PT Terms were included in the general Terms of Use agreed to by all Celsius users, but applied only to users in New York and Washington. Account holders in New York and Washington were required to expressly acknowledge and agree to the PT Terms (in addition to the Terms of Use) in order to open a Celsius account (“Celsius-PT Accounts” and, the holders of such Celsius-PT Accounts, “Account Holders”). The PT Terms explain that crypto assets in Celsius-PT Accounts would be held by Prime Trust, rather than Celsius.

17. By accepting the PT Terms, Account Holders authorized Celsius to, among other things, instruct Prime Trust to effect a transfer of their assets held by Prime Trust.

18. The PT Custody Account Agreements. The PT Custody Account Agreements set forth certain terms under which Prime Trust agreed to hold the Subject Property, including Prime Trust’s duties, all of which expressly were “ministerial in nature.” *See* Exs. A, B (PT Custody Account Agreements) §§ 1, 2. By acknowledging the PT Terms contained in Celsius’ general Terms of Use, New York and Washington users “represent[ed] and warrant[ed] to Celsius that [the users] expressly accept [the User PT Custody Account Agreement]” and that Prime Trust “is providing their products and services ... to [the users] subject to the [User PT Custody Account Agreement].” *See* Mashinsky Decl., Ex. A-4 (PT Terms) § 5. Celsius has been unable to confirm whether Prime Trust in fact entered into User PT Custody Account Agreements with all, or any, of Celsius’ New York and Washington users.

19. Celsius and Prime Trust also entered into a Celsius PT Custody Account Agreement. Prime Trust conceded as much—in its June 9, 2021 purported termination notice (discussed *infra*) Prime Trust referred to a Celsius/PT Account Agreement dated November 13, 2019. The terms of the Celsius PT Custody Account Agreement are materially similar to the terms of the User PT Custody Account Agreement.

20. Under the PT Custody Account Agreements, Prime Trust is required to “process any purchase, sale, exchange, investment, disbursement or reinvestment of Subject Property under this Agreement that Account Holder or its Agents may at any time direct.” *See* Ex. A (User PT Custody Account Agreements) § 4(e); Ex. B (Celsius PT Custody Account Agreement) § 4(f). The Account Holder’s “Agent” is granted access to the Celsius-PT Account and “the ability to instruct Prime Trust to take action with respect to the [Subject Property] and [Celsius-PT] Account, including without limitation to invest, sell, receive, deliver or transfer [Subject Property].” *See* Exs. A, B (PT Custody Account Agreements) § 5(b).

21. The parties to the PT Custody Account Agreements were entitled to terminate the agreements on thirty days’ written notice. *See id.* § 6(b). Thereafter, Prime Trust was obligated to deliver the Subject Property to the Account Holder or a successor to Prime Trust as soon as practicable. *See id.* § 6(d). Prime Trust’s “responsibility under [the PT Custody Account Agreements]” does not cease until all Subject Property has been delivered. *See id.* In its June 9, 2021 termination notice, Prime Trust promised it would deliver all assets to Celsius. It did not do so.

22. The Services Agreement. The Services Agreement was dated October 4, 2019. The Services Agreements governed the application programming interface (“API”) services Prime Trust provided to Celsius in connection with the Celsius-PT Accounts. Those services included, but were not limited to, various types of accounts, escrow services for initial and secondary offerings (and subsequent transactions), transaction engines, funds processing, execution of token purchases and sales for users, KYC (“know your customer”), anti-money laundering, and “Bad Actor” checks. *See* Ex. C (Services Agreement) § 1; Ex. A to Services Agreement §§ 3, 5, 6, 7, 8, and 9.

23. Users in New York and Washington agreed to Celsius’ standard Terms of Use, the PT Terms, and Prime Trust’s own terms of use, and by agreeing to the PT Terms, the user represented that he, she, or it accepted the User PT Custody Account Agreement with Prime Trust. Celsius did not exercise any rights to deploy assets under Section 14 of the Terms of Use with respect to assets held at Prime Trust. Upon information and belief, Prime Trust did not interact directly with Celsius users after assets were transferred to Prime Trust.

C. **Prime Trust Terminated Its Agreements with Celsius But Failed to Turn Over Celsius’ Property**

24. In June 2021, Prime Trust purported to terminate its obligations under the Services Agreement and the Celsius PT Custody Account Agreement between it and Celsius. Specifically, on June 9, 2021, Prime Trust sent Celsius a putative “Notice of Termination of API Technology and Prime Asset Custody Account Agreements,” purportedly pursuant to section 8.2 of the Services Agreement and section 6(b) of the Celsius PT Custody Account Agreement, effective on July 9, 2021 (the “June 9 Letter”).⁷

25. In the June 9 Letter, Prime Trust asserted that as a result of the termination of the Services Agreement and the Celsius PT Custody Account Agreement, Celsius could no longer use Prime Trust’s services and that Prime Trust was “relieved from any further obligations to provide services.” *See* Ex. D (June 9 Letter). Prime Trust also recognized its contractual obligation “[p]ursuant to Section 6.d of the [Celsius PT Custody Account Agreement to] deliver the [Subject P]roperty to Celsius ... within a reasonable amount of time.” *See id.* Prime Trust did not honor that obligation. Upon information and belief, Prime Trust never communicated with Celsius users in any manner regarding the termination. Rather, upon information and belief, Prime Trust has at

⁷ A true and correct version of the June 9 Letter is attached hereto as Exhibit D.

all times communicated exclusively with Celsius regarding the termination and the transfer of crypto assets in Prime Trust's possession.

26. After receiving the termination notice, Celsius prepared updated terms of use which eliminated and replaced the PT Terms in their entirety (the "Preliminary Updated Terms of Use"). Celsius provided the Preliminary Updated Terms of Use to users in New York and Washington by email on July 2 and July 5, 2021. A modified update to the terms of use (the "Revised Updated Terms of Use") was posted to Celsius' website on July 22, 2021.⁸ In order to access and use Celsius' services, users were required to agree to the Preliminary Updated Terms of Use and/or Revised Updated Terms of Use (the "Updated Terms of Use"), and most did so (the "Authorizing Users"). In acknowledging the Updated Terms of Use, the Authorizing Users agreed to loan their crypto assets to Celsius and re-affirmed that Celsius possessed all rights and title to the Subject Property. *See, e.g.*, Mashinsky Decl., Ex. A-6 (Revised Updated Terms of Use) §§ 1, 4(a), 4(b), 7, 8, 13.

27. After receipt of acknowledgment of the Updated Terms of Use from an Authorizing User, Celsius directed Prime Trust to deliver the Subject Property held by Prime Trust associated with that Authorizing User. Prime Trust complied with Celsius' instructions to transfer certain Subject Property for which Celsius had received user authorization, including Subject Property worth approximately \$119 million (at recent prices) that Prime Trust transferred to Celsius in accordance with Celsius' instructions from July 6, 2021 to August 24, 2021.

28. But Prime Trust has refused to fulfill its obligations to transfer certain other Subject Property as requested by Celsius. Celsius sought for many months to persuade Prime Trust to

⁸ A true and correct version of the Revised Updated Terms of Use is attached to the Mashinsky Decl. as Exhibit A-6.

honor its obligations and transfer identified Subject Property to Celsius. At times, it appeared those efforts were close to being rewarded.

29. However, to this day, Prime Trust continues to withhold wrongfully Subject Property that Celsius has directed Prime Trust to release, including based on the consent of the Authorizing Users in New York and Washington to the Updated Terms of Use (the “Authorized Assets”).

30. Prime Trust cut off Celsius’ access to the API that allowed Celsius to view account activity. However, upon information and belief, the Authorized Assets consist of approximately 398 Bitcoin, 196,268 CEL tokens, 3,740 ETH, and 2,261,448 USDC, collectively worth about \$17 million at recent prices.

31. Upon information and belief, Prime Trust remains in possession of the Authorized Assets.

FIRST CAUSE OF ACTION
(Turnover)

32. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 31 as if fully set forth herein.

33. At all relevant times, Celsius had legal ownership and/or right to possession over the Authorized Assets.

34. Upon information and belief, Prime Trust had possession, custody, or control of the Authorized Assets or their proceeds at the time Celsius filed its chapter 11 petition on July 13, 2022, and continues to have possession, custody, and control of the Authorized Assets or their proceeds currently.

35. The Authorized Assets are property that Celsius could use, sell, or lease under section 363 of the Bankruptcy Code, and are not of inconsequential value or benefit to Celsius’

estate. On the contrary, the Authorized Assets are worth approximately \$17 million (at recent prices).

36. Pursuant to section 542 of the Bankruptcy Code, Prime Trust should be directed to turn over the Authorized Assets to Celsius.

37. It is possible that users who are unaware that Prime Trust's relationship with Celsius has been terminated may transfer additional crypto assets to Prime Trust following entry of a judgment directing turnover of the Authorized Assets. Celsius therefore requests that such judgment be continuing in nature, requiring the turnover of any such additional crypto assets.

SECOND CAUSE OF ACTION
(Breach of the PT Custody Account Agreements)

38. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 37 as if fully set forth herein.

39. Under the PT Terms, users authorized Celsius to instruct Prime Trust to affect transfers of Subject Property to and from their Celsius-PT Accounts. The PT Custody Account Agreements, in turn, authorized Celsius to direct the disposition of all such assets in Prime Trust's possession and, upon the termination of the PT Custody Account Agreements, Prime Trust was required to deliver the Subject Property to Celsius, as Prime Trust expressly acknowledged in its June 9 Letter. Prime Trust has failed to do so with respect to the Authorized Assets.

40. Celsius has directed Prime Trust to deliver the Authorized Assets to Celsius on multiple occasions, but Prime Trust has failed to do so.

41. Prime Trust has admitted in writing its obligation to transfer the Authorized Assets to Celsius.

42. Celsius has suffered damages as a result of Prime Trust's failure to transfer the Authorized Assets timely.

43. Celsius is entitled to an order finding Prime Trust in breach of contract, directing Prime Trust to comply with its contractual obligations and Celsius' duly-issued instructions to transfer the Authorized Assets to Celsius, and awarding damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request a judgment:

- (a) In favor of Plaintiffs and against Defendant;
- (b) Ordering Defendant to turn over to Plaintiffs all of the Authorized Assets;
- (c) Ordering Defendant to turn over any other crypto assets that Celsius users may transfer to Prime Trust following entry of judgment;
- (d) Ordering Defendant to perform its obligations under the PT Custody Account Agreements and deliver to Plaintiffs the Authorized Assets;
- (e) Awarding Plaintiffs actual damages in an amount to be determined at trial, together with all pre- and post-judgment interest due and owing thereon; and
- (f) Awarding such other and further relief as this Court deems just and proper.

Dated: August 23, 2022
New York, New York

AKIN GUMP STRAUSS HAUER & FELD LLP

By: /s/ Mitchell P. Hurley
Mitchell P. Hurley
Dean L. Chapman Jr.
John P. Kane
One Bryant Park
New York, New York 10036
(212) 872-1000

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